



February 27, 2017

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
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Jeffery Hildebrand
Chairman and Chief Executive Officer
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Re: Notice of Violations for Hilcorp's Pipeline Leak in the Cook Inlet, Alaska

On behalf of the Center for Biological Diversity, I am writing to urge Administrator Pruitt and the Environmental Protection Agency (EPA) to promptly enforce violations of the Clean Water Act and Clean Air Act against Hilcorp Alaska, LLC for discharges of natural gas, oil and other pollutants into the Cook Inlet.¹ On or before February 7, 2017, Hilcorp Alaska's pipeline between Platform A and onshore facility in Nikiski ruptured and is leaking substantial amounts of natural gas and other pollutants into the Cook Inlet.

To date, the ruptured pipeline remains uncontrolled and is estimated to be leaking between 210,000 to 310,000 cubic feet of natural gas per day.² Natural gas pollution can accumulate in waters and harm water quality and wildlife. For example, it creates low-oxygen, dead zones that displace and harm fish and other wildlife. The natural gas leak poses a risk to the critically endangered Cook Inlet beluga whale and its critical habitat. EPA must take swift action to ensure that Hilcorp stops the leak, mitigates damage and restores and recovers the Cook Inlet and its sensitive wildlife.

I. EPA Must Enforce Violations of the Clean Water Act and Clean Air Act

EPA must pursue an action against Hilcorp for its violations of the Clean Water Act and Clean Air Act. Congress created the EPA to protect human health and the environment, and it is charged with preventing air and water pollution. At this time the uncontrolled release of natural gas and other pollutants into the Cook Inlet is dangerous and it is damaging air quality, water quality and wildlife.

On February 7, 2017, a natural gas leak was reported in the Cook Inlet discharging natural gas (98.67% methane) and likely other hydrocarbons and pollutants into the water and air. The source was identified as an eight-inch pipeline leak between Platform A and Nikiski (Lat/Long: 60.776367, -151.43365). The leak was discovered during a flyover. According to its

¹ 33 U.S.C. §§ 1251 *et seq.* (CWA); 42 U.S.C. § 7412(r) (CAA).

² Alaska Department of Environmental Conservation, Situation Report #2 (Feb. 21, 2017).

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pending Oil Discharge and Prevention Plan, Hilcorp is supposed to conduct flyovers every two weeks. Hilcorp Alaska is the responsible party for those facilities and the pipeline. On February 15, 2017, the pipeline was estimated to be leaking between 225,000 to 325,000 cubic feet of natural gas per day since at least February 7, 2017.³ On February 21, the company's estimate was reduced to 210,000 to 310,000 cubic feet of natural gas.⁴ To date, the leak is ongoing and the condition and age of the pipeline makes intermittent violations likely to continue into the future.

Hilcorp has violated and continues to violate section 301 of the Clean Water Act that prohibits the unauthorized discharge of pollutants into navigable waters and oceans.⁵ The discharges also violate the limitations and conditions of the Cook Inlet oil and gas extraction facilities general permit.⁶

EPA should also enforce the Clean Air Act for the methane emissions resulting from the leak. The ongoing leak of Hilcorp's pipeline in the Cook Inlet is bubbling natural gas to the surface and polluting the atmosphere. These atmospheric releases violate the Clean Air Act section 112 (r)(1) that creates a general duty to prevent the accidental release of hazardous substances, including methane.⁷ Hilcorp is also in violation of its Clean Air Act permit's limitations and conditions, including duties to maintain equipment and minimize emissions and its prohibition of "any emission which is injurious to human health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property."⁸

EPA must diligently prosecute the Clean Water Act and Clean Air Act to protect human health, safety and the environment. It cannot allow oil companies to allow an uncontrolled release of natural gas into the sensitive Cook Inlet. This natural gas leak is damaging important Cook Inlet beluga and salmon habitat; furthermore, methane is a potent greenhouse gas.

II. Notice of Intent to Sue

This letter also serves as a notice by the Center for its intent to sue Hilcorp Alaska if EPA declines to take action for violations of the Clean Water Act and Clean Air Act. Moreover, the Center provides Hilcorp with notice of its violations of the Pipeline Safety Act and Endangered Species Act. This sixty-day notice is provided under 33 U.S.C. § 1365(b) as a prerequisite to bringing a citizen suit under the Clean Water Act, and pursuant to 42 U.S.C. § 7604 as a prerequisite to bringing a citizen suit provision under the Clean Air Act. This letter also serves as a 60 day notice of intent to sue Hilcorp over violations of Section 9 of the Endangered Species Act (ESA), 16 U.S.C. § 1538, for actions and inactions relating to the critically endangered Cook Inlet Beluga Whale. 16 U.S.C. § 1540(g). Finally, the Center also notifies Hilcorp of its intent to file a citizen-suit for violations of the Pipeline Safety Act, 49 U.S.C. § 60121.

³ Alaska Department of Environmental Conservation, Situation Report #1 (Feb. 15, 2017).

⁴ Alaska Department of Environmental Conservation, Situation Report #2 (Feb. 21, 2017).

⁵ 33 U.S.C. § 1311; 33 U.S.C. § 1342.

⁶ EPA, Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES) for Oil and Gas Extraction Facilities in Federal and State Waters in Cook Inlet (2007) (expired 2012).

⁷ 42 U.S.C. § 7412 (r)(1); 42 U.S.C. § 7604 (citizen-suit provision).

⁸ Alaska Department of Environmental Conservation, Air Quality Operating Permit No. AQ0084TVP0 (2014).

a. Violations of the Endangered Species Act

Hilcorp Alaska's gas leak in the Cook Inlet harming critically endangered Cook Inlet beluga whales, other wildlife, and their habitat. It is unlawful to take these endangered belugas.⁹ The population of Cook Inlet beluga whales has declined precipitously in the last 30 years. In 1979, the estimated population of Cook Inlet beluga whales was approximately 1,300.¹⁰ By 2012, the population had dropped by more than 75 percent to only 312 whales.¹¹ Accordingly, NMFS listed the Cook Inlet beluga whale as endangered under the ESA in October 2008.¹² And NMFS designated critical habitat in April 2011, which includes 3,013 square miles of biologically important marine habitat in the Inlet.¹³

In 2015, NMFS issued a draft recovery plan for Cook Inlet beluga whales that found the whales face a high threat of extinction for the foreseeable future. Threats with the potential to limit recovery of the species include anthropogenic noise; catastrophic events such as oil spills or earthquakes; prey reduction; pollution; and the cumulative effects of multiple stressors, among others.¹⁴ In 2016, NMFS released its "Species in the Spotlight: Survive to Thrive" initiative, a concerted agency-wide effort to spotlight and save highly at-risk species. Cook Inlet belugas are one of the eight species. According to NMFS, "[t]he rapid decline and dire status of the Cook Inlet beluga whale population makes it a priority for NMFS and our partners to prevent extinction and promote recovery of this iconic species."¹⁵

High concentrations of natural gas in Cook Inlet beluga habitat are likely to directly and indirectly harm beluga whales. The inhalation of natural gas, primarily methane, is harmful for marine mammals; and impaired water quality can cause physiological harm and stress for marine mammals. The gas leak is occurring within the winter foraging area for the beluga whales, and damaging their critical habitat. The essential features for the conservation of the belugas include their primary prey and waters free from toxins and other agents in harmful quantities.¹⁶ The conditions caused by Hilcorp's gas leak are especially harmful for fish that are prey for the beluga whales; NMFS's draft recovery plan specifically lists prey availability as an important factor affecting the survival and recovery of the species.¹⁷

Natural gas (and its primary component, methane) is toxic to fish and shellfish. As natural gas travels through the water column it dissolves into the water and is highly toxic to marine life.¹⁸ The natural gas causes physiological damage to the eyes, skin, gills and gas bladder; which harms the fitness and survival of fish. While fish exposed to low concentrations

⁹ 16 U.S.C. § 1538 (ESA).

¹⁰ National Marine Fisheries Service (NMFS), Conservation Plan for the Cook Inlet beluga whale (*Delphinapterus leucas*) at 29 (2008).

¹¹ Sheldon et al., Aerial Surveys of Belugas in Cook Inlet, Alaska (June 20, 2012).

¹² 73 Fed. Reg. 62919 (October 22, 2008).

¹³ 76 Fed. Reg. 20180 (April 11, 2011).

¹⁴ See NMFS, Draft Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*) (May 15, 2015).

¹⁵ Cook Inlet Beluga Action Plan at 2.

¹⁶ National Marine Fisheries Service, Designation of Critical Habitat for Cook Inlet Beluga Whale, 76 Fed. Reg. 20180, 20203 (Apr. 11, 2011).

¹⁷ Draft Recovery Plan at 75; 80.

¹⁸ Novaczek, Irene, Impact of Natural Gas in the Marine Environment, Watershed Sentinel (Oct. 9, 2012).

of natural gas may be displaced from their habitat, higher concentrations above 1 mg/l causes disorientation and acute poisoning of fish within 15 to 20 minutes and mortality within days. The natural gas leak thus poses a risk to the Cook Inlet's fish, including salmon, and their habitat. In addition, high concentrations of methane can trigger the growth of microbes which break up the methane but also consume the oxygen needed by marine species to survive, creating conditions of low oxygen (hypoxic) or no oxygen (anoxic) called dead zones where species are displaced, killed or harmed.¹⁹

The natural gas leak from Hilcorp's pipeline is dangerous for Cook Inlet beluga whales. It is unlawful for Hilcorp to take endangered Cook Inlet beluga whales.²⁰ Furthermore, the federal agencies responding to the pipeline leak have duties to conserve endangered species under sections 2 and 7,²¹ and the agencies must comply with Section 7 consultation with the National Marine Fisheries Service to ensure that their actions do not jeopardize threatened or endangered species or adversely modify their critical habitat, as required by the ESA.²²

b. Violations of the Pipeline Safety Act

Hilcorp also failed to maintain its pipelines and infrastructure to prevent the gas leak, in violation of the Clean Water Act, the general permit, and the Pipeline Safety Act and its regulations.²³ The ruptured pipeline was built in 1965 and has not been adequately inspected and maintained. The responsible party has failed to take adequate measures to maintain, repair and replace the pipeline to prevent leaks. For example, while other pipelines are frequently inspected for wall thickness using smart pigs, Hilcorp here proposes only hydro-test inspections every five years for its Flowline A, the ruptured pipeline.²⁴ And it is unclear whether Hilcorp has inspected the pipeline since it acquired it in 2015.

Hilcorp's history of safety violations and warnings highlights these concerns. The U.S. Pipeline and Hazardous Materials Safety Administration issued Hilcorp warning letters over its gas pipelines in September and January of 2016 and December 2015, citing improper maintenance, corrosion control and control-room management.²⁵ The Alaska Oil and Gas Conservation Commission has also repeatedly cited Hilcorp for violating safety regulations for its oil and gas operations in the state.²⁶ In December 2016 the commission fined Hilcorp \$30,000 for failing to calibrate its gas meters or submit required reports from August 2014 through December 2016. In its order the commission wrote, "Hilcorp's history of noncompliance and its failure to take the rudimentary measure of entering AOGCC's requirements in its regulatory

¹⁹ Joy, Samantha, et al. Magnitude and oxidation potential of hydrocarbon gases released from the BP oil well blowout, *Nature Geoscience* 4, 160–164 (2011); Goldenberg, Suzanne, Methane Dead Zones in Gulf Waters Confirmed, Gas Levels 100,000 Times Normal, *Inside Climate News* reprinted from *Guardian* (Jul. 1, 2010).

²⁰ 16 U.S.C. § 1538.

²¹ 16 U.S.C. § 1531(c); 16 U.S.C. § 1536(a)(1).

²² See 16 U.S.C. § 1536(a)(2).

²³ 49 C.F.R. Part 192; 49 U.S.C. § 60121 (citizen-suit provision).

²⁴ Hilcorp, Oil Discharge Prevention and Contingency Plan Cook Inlet Production Facilities (under review 2017).

²⁵ PHMSA, Federal Inspection and Enforcement Data

https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIE_opid_32645.html?nocache=1529#_EnforcementActions_tab_2

²⁶ Alaska Oil and Gas Conservation Commission, Enforcements and Violations
<http://doa.alaska.gov/ogc/orders/ev/evindex.html>

tracking system preclude any claim that Hilcorp has acted in good faith.”²⁷ Just seven months earlier, the commission fined Hilcorp \$20,000 for failing to test crucial blowout-prevention devices, calling its communications over the incident “misleading and incomplete” and writing “disregard for regulatory compliance is endemic to Hilcorp’s approach to its Alaska operations.”²⁸

In sum, Hilcorp Alaska is in violation of the Clean Water Act, the Clean Air Act, Pipeline Safety Act and the Endangered Species Act due to its continuing release of natural gas from a pipeline in the Cook Inlet.

III. Person giving notice

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IV. Conclusion

EPA must take swift action to enforce the Clean Water Act and Clean Air Act against Hilcorp and to compel the company to stop the leak and restore the damage it has caused. If EPA fails to act, the Center will take action. During the sixty-day notice period, the Center will be available to discuss effective remedies and actions that might be taken to assure compliance in the future with these statutes. If you wish to discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact us.

Sincerely,

/s/ Miyoko Sakashita
Miyoko Sakashita, Senior Counsel

²⁷ *Id.* <http://doa.alaska.gov/ogc/orders/como/other113.pdf>

²⁸ *Id.* <http://doa.alaska.gov/ogc/orders/como/other109.pdf>

cc:

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